

REMARKS

Upon entry of the above amendment, claims 1-2 and 5-6 will have been amended to enhance the clarity without narrowing the scope thereof and for reasons unrelated to patentability. Non-elected claims 4 and 8-10 will have been withdrawn as a result of the Examiner's restriction requirement. Further, claim 11 will have been newly added and no claims will have been canceled. Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections set forth in the above-mentioned Official Action.

Additionally, by the above amendment, the specification will have been amended to enhance the clarity thereof. In this regard, Applicants respectfully submit that the amendments to the specification do not constitute new matter. In particular, Applicants have amended the specification to enhance the clarity thereof by using, "machining chips", with respect to discussions regarding fine metal pieces or cuttings. Applicants have also amended "pressure control valve" to "pressure control holes" on page 8 to be more consistent with earlier recitations of "pressure control holes" as cited, for example, in the paragraph preceding the amended paragraph. In accordance with at least the drawings, Applicants have amended page 19 to clarify that the portions of Figure 4 that are in common with Figure 2 have similar reference numerals. In addition, page 22 was amended to recite "the pneumatic conveyor 4" to be more consistent with earlier recitations and is supported, for example, on page 13 of the specification. Also, the reference numeral of the ejector cited on page 23 was amended to correspond to the correct reference number of 6. Furthermore, other amendments, which are supported

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by the specification (including the drawings) and which provide language clarification, have been made. Accordingly, Applicants respectfully request entry of each of the above amendments, as well as the Examiner's review thereof.

Furthermore, Applicants thank the Examiner for considering the document cited in the Information Disclosure Statement, filed on January 14, 2004.

Applicants also note with appreciation the Examiner's acknowledgement of Applicants' Election with Traverse, filed on September 3, 2004. Although the Examiner has made the restriction requirement Final, Applicants nevertheless maintain that the restriction is inappropriate for at least the reasons discussed in Applicants' Election with Traverse. Accordingly, withdrawal of the restriction is respectfully requested.

In the Official Action, the Examiner rejected claim 6 under 35 U.S.C. §112, second paragraph as being indefinite. In particular, the Examiner indicated that it is unclear if a fluid medium conveyor comprising entrained matter is being claimed. In this regard, the Examiner suggests replacing "for forming" to --which forms-- and replacing "conveying stream" to language reciting a fluid medium conveyor comprising entrained matter. Although Applicants do not necessarily agree with the Examiner's assertions, Applicants have nevertheless amended the claims to enhance the clarity thereof. In this regard, Applicants have amended "for forming" to "configured to form" to clarify the recitation. Accordingly, as the current recitations are now believed to be clear with respect to the subject matter being claimed (e.g., that the fluid conveyor is being claimed and that the entrained matter is not being claimed), favorable reconsideration and withdrawal of the rejection is respectfully requested.

Further, with respect to the 35 U.S.C. §112 rejections, Applicants note that the Examiner refers to “for conveying to be conveyed” with respect to lines 1-2 of claim 6 and refers to “for forming” and “conveying stream” with respect to line 5 of claim 6 . By reciting such line numbers, it is apparent that the Examiner did not examine the claims contained in the Preliminary Amendment, which was filed concurrently with the application on October 7, 2003. In this regard, Applicants respectfully submit that the claims in the Preliminary Amendment should have been the examined claims. Accordingly, the Examiner is respectfully requested to confirm which claim set was examined.

The Examiner further asserts that failure to amend claim 6 towards claim 5 may result in an additional restriction requirement in the next Office Action. Applicants, however, are unclear as to what the Examiner is attempting to assert by the above statement. Accordingly, Applicants respectfully request clarification together with support and reasoning regarding the Examiner’s assertions or withdrawal of the Examiner’s assertions.

Nevertheless, Applicants submit that claims 5 and 6 are directed, *inter alia*, towards a fluid conveyor including an ejector.

Moreover, the Examiner rejected claims 1-3 and 5-7 under 35 U.S.C. §102(d) as being anticipated by MOROHASHI et al. (JP 2002-356224). Applicants, however, respectfully traverse the 35 U.S.C. §102(d) rejection and submit that the above-mentioned rejection is inappropriate.

According to MPEP§ 706.02(e) and MPEP§ 2135.01, there are four requirements that must be satisfied in order to establish a proper rejection under 35 U.S.C. §102(d). However, Applicants respectfully submit that the claims are improperly rejected under 35 U.S.C. §102 (d) at least due to JP 2002-356224 not meeting all of the necessary requirements.

Applicants submit that one of the requirements for establishing a proper 35 U.S.C. §102(d) is that the foreign patent or inventor's certificate must be granted before the U.S. filing date. In this regard, according to MPEP§ 2135.01, a published application must issue into a patent before it can be applied in a 35 U.S.C. § 102(d) rejection. Moreover, MPEP§ 2135.01 states that "patenting" within the meaning of 35 U.S.C. §102(d) does not occur upon laying open a Japanese utility model application (kokai or kohyo).

Regarding the above requirement, Applicants submit that JP 2002-356224 is a kokai application and not a patent. Accordingly, a rejection under 35 U.S.C.102(d), as asserted by the Examiner with regards to JP 2002-356224, does not properly apply in the present case. For at least this reason, Applicants respectfully request withdrawal of the rejection and passage of the present application to issue.

Furthermore, Applicants submit new independent claim 11 for the Examiner's consideration. New independent claim 11 is believed to be allowable due to the combination of features recited therein, as well as for at least the reasons discussed herein.

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Thus, in view of the herein-contained remarks, Applicants submit that claims 1, 5-6, and 11 are in condition for allowance. With regard to dependent claims 2-4 and 7, Applicants assert that they are allowable on their own merit, as well as because they depend either directly or indirectly from independent claim 1, which Applicants have shown to be allowable.

Accordingly, Applicants respectfully request reconsideration of the outstanding rejections, withdrawal of the outstanding rejections, and an indication of the allowability of all claims in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

SUMMARY AND CONCLUSION

Applicants believe that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have amended the claims to enhance clarity only and argued their allowability. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the recited claims therein are respectfully requested and now believed to be appropriate.

The amendments to the claims, which have been made in this amendment, have not been specifically noted to overcome a rejection based upon the prior art and should be considered to have been made for a purpose unrelated to patentability. Accordingly, no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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